NINTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER

1990

ISSN 0832-9052

RC-0071 (rev. 07/91)

OFFICE OF THE POLICE
COMPLAINTS COMMISSIONER
157 Bloor Street West
Toronto, Ontario M5S 1P7
(416) 963-3564 – Administration
(416) 963-1141 – Investigations
Toll Free: 1-800-267-5648
Fax (416) 963-3444

BUREAU DU COMMISSAIRE DES
PLAINTES CONTRE LA POLICE
157, rue Bloor ouest
Toronto (Ontario) M5S 1P7
(416) 963-3564 – Administration
(416) 963-1141 – Enquêtes
Composer sans frais le : 1-800-267-5648
Télécopieur : (416) 963-3444

June 25, 1991

Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street
11th Floor
Toronto, Ontario
M5G 2K1

Solicitor General of Ontario
Ministry of the Solicitor General
25 Grosvenor Street
11th Floor
Toronto, Ontario
M7A 1Y6

Dear Mr. Attorney and Mr. Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the Metropolitan Toronto Police Force Complaints Act, 1984, I am pleased to enclose herein the Ninth Annual Report of the Office of the Public Complaints Commissioner.

Sincerely,

CLARE LEWIS
Public Complaints Commissioner

am
encl.

TABLE OF CONTENTS

		PAGE NO.
PART I -	OVERVIEW OF COMPLAINTS SYSTEM; EXPANSION OF SYSTEM	
	COMMISSIONER'S MESSAGE	1
A.	AN OVERVIEW	3
B.	EXPANSION OF THE SYSTEM	6
PART II -	RESEARCH AND STATISTICS	
A.	INTRODUCTION	8
B.	RESEARCH DATA	9
	1. Location of the Incident	9
	2. Allegations	10
	3. Injuries	16
	4. Characteristics of Officers	17
	5. Police Division in Which Complaint Arose	18
	6. Complaint Process Data	21
	(a) Filing a Complaint	21
	(b) Complaint Investigation	24
	(c) Informal Resolutions	25
	(d) Withdrawals	26
	(e) Decisions by the Chief of Police	29
	(f) Summary of Disposition of Complaints	33
	7. Reviews by Public Complaints Commissioner	36
	8. Length of Time Taken to Resolve Complaints	37
	9. Complaints Filed at the Office of the Public Complaints Commissioner, and Requests for Review by the Commissioner	39

TABLE OF CONTENTS (cont'd) **PAGE NO.**

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC 41

B. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE 42

1. Council on Race Relations and Policing 42

2. The Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Communities 43

3. Toronto Mayor's Committee on Community and Race Relations Subcommittee on Policing 44

4. Metropolitan Board of Commissioners of Police: South Asian Committee 45

C. INTERGOVERNMENTAL INFORMATION SHARING AND INITIATIVES 46

1. Intergovernmental Race Relations Network 46

2. Attorney General's Race Relations Committee 46

D. ATTENDANCE BEFORE THE LEGISLATURE'S STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE 47

E. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (IACOLE) 48

PART IV - RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE 50

PART V - BOARDS OF INQUIRY

A. INTRODUCTION 78

B. BOARD OF INQUIRY DECISIONS 80

APPENDICES

A.	Metropolitan Toronto Police Force Complaints Act, 1984	85
B.	Code of Offences	107
C.	Police Services Act, 1990, Part VI	110

LIST OF TABLES

1.	Location of Incident	9
2.	Type of Allegation	11
3.	Precipitating Factor	14
4.	Charge Against complainant	15
5.	Alleged Injuries to Complainant	16
6.	Rank of Police Officer	18
7.	Years of Service	18
8.	Division of Occurrence	19
9.	Location Complaint Filed	22
10.	Days - Occurrence to Filing	22
11.	Analysis of Informal Resolutions	26
12.	Reasons for Withdrawal	28
13.	Discipline Taken Against Police Officers	32
14.	Complaint Resolution by Type of Allegation	35
15.	Number of Days From Review Request to P.C.C. Decision	38

LIST OF FIGURES

1.	The Complaints Process	7
2.	Type of Allegation	12
3.	Map	20
4.	Location Where Complaint Filed	23
5.	Initial Disposition of Complaints	34
6.	Work-load Indicators	40

PART I

Overview of Complaints System

Expansion of System

COMMISSIONER'S MESSAGE

The Police Services Act, 1990 which was passed on June 28, 1990 and proclaimed in force December 31, 1990, extends civilian review of police complaints across the Province of Ontaric. The Act has expanded the jurisdiction of this office throughout the province to deal with public complaints involving every Ontario police officer. The title of the Public Complaints Commissioner has been changed to the Police Complaints Commissioner. On December 31, 1990, I was appointed Police Complaints Commissioner pursuant to the new Act; with some modification, the province-wide system is essentially that which has operated in Metropolitan Toronto since 1981. A copy of Part VI of the new Act is included as an appendix to this Report.

There has been need in 1990 to prepare for the anticipated expansion. To meet the demands of the new legislation, we began planning for regional offices in Thunder Bay, Sudbury, Windsor, Peterborough, Ottawa and Mississauga. Regional offices are necessary to give any member of the public throughout Ontario the option to register a complaint directly with the Office of the Police Complaints Commissioner as well as at any police division or detachment; to permit staff of the regional offices to conduct effective monitoring and review of local and regional complaints, subject to my direction; and to ensure awareness and inclusion of local and regional issues in arriving at decisions as required by the Act.

In addition, we initiated a vigorous education programme directed at police across the province. Senior staff and I met with Chiefs of Police, Chairs and members of Police Services Boards, municipal officials and officials of police associations, to familiarize them with the requirements of the new legislation.

We have developed an investigation manual for the Public Complaints Investigation Bureaus of police forces across the province, and have travelled throughout the province conducting workshops with the staff of police complaints bureaus based on the legislation and the manual.

A brochure for police officers in English and French, outlining their rights and responsibilities under the Act, has been prepared and distributed to all police officers in the province. A public brochure has also been produced and distributed. It is now available in English and French and is being translated into other languages.

With the enactment of the new legislation, this is the last Annual Report of the Public Complaints Commissioner dealing solely with Metropolitan Toronto police. I look forward to becoming acquainted with police-community issues throughout the province, and to the challenge of expanding this valuable service to all residents of Ontario.

PART I - OVERVIEW OF COMPLAINTS SYSTEM

A. AN OVERVIEW

The Office of the Public Complaints Commissioner began operations in 1981 pursuant to provisions of the Metropolitan Police Force Complaints Project Act, 1981. That Act was replaced by the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984, and which is included here as Appendix A.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the complaint has been filed. A significant part of the Commissioner's function, therefore, is not initial investigation but, rather, the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and re-investigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner receives a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains ongoing communication with the Public Complaints Investigation Bureau of the Force in regard to general issues pertaining to investigation as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can re-investigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees or disagrees with the Chief of Police, recommendations may be made to prevent the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in such cases.

The Board of Inquiry tribunal consists of either one or three civilians depending on whether the complaint is minor or serious. The Board has the responsibility of holding a hearing into the complaint. The officer is usually represented by counsel and the

complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is tendered, and arguments of law are made. The legislation provides that misconduct can be established only if proved beyond a reasonable doubt. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

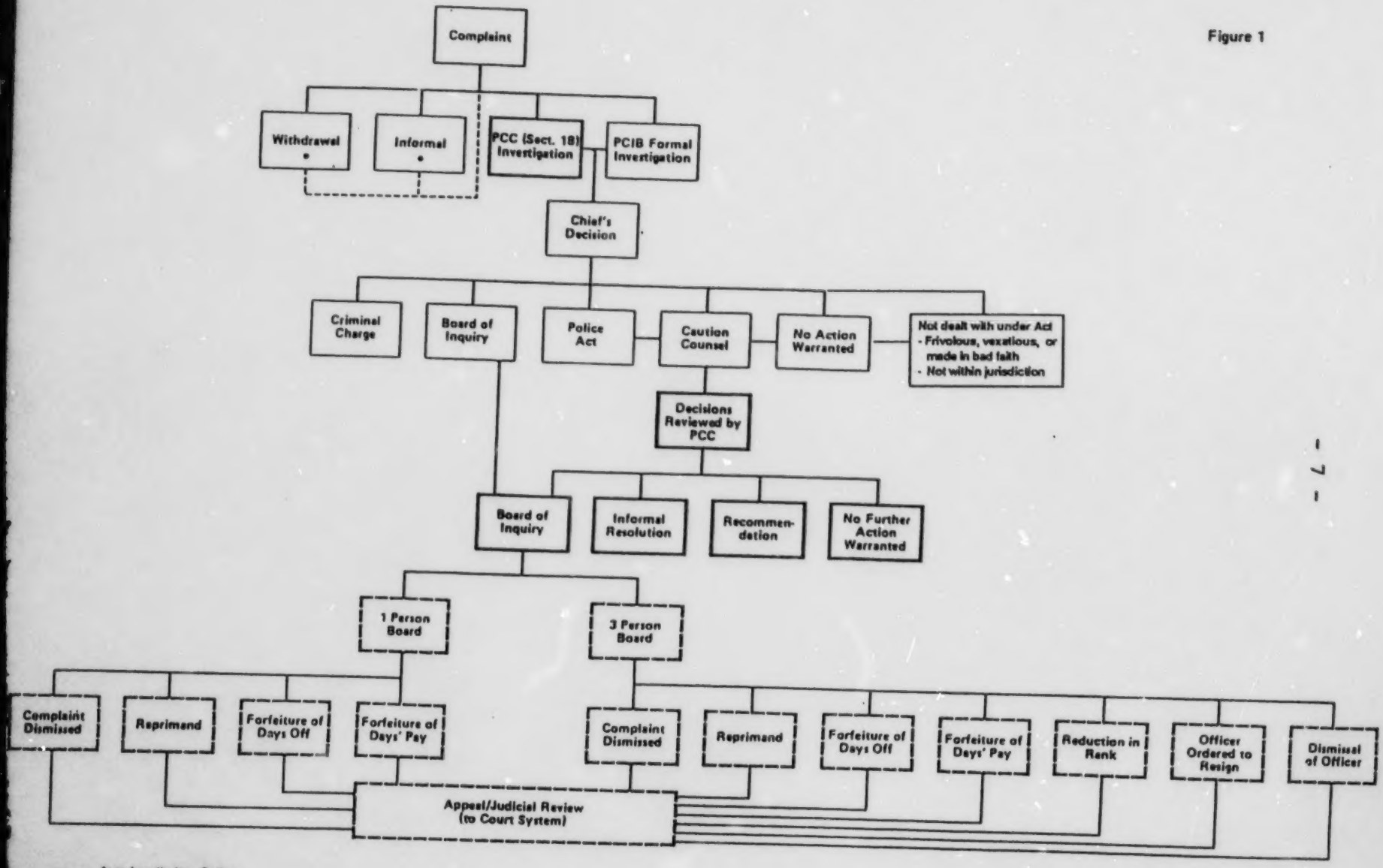
The chart in Figure 1 shows the possible stages of a complaint. These stages can be roughly divided into the police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly occurring events in the complaint system.

B. EXPANSION OF THE SYSTEM

The Police Services Act, 1990 was enacted effective December 31, 1990. Part VI of the new Act incorporates the complaint system that has been in effect in Metropolitan Toronto, and extends the jurisdiction of this Office throughout Ontario. The system of civilian review of complaints by an independent Commissioner has been extended to all municipal police forces and police officers in the province, and to the Ontario Provincial Police. The Act changes the title of the Public Complaints Commissioner to the Police Complaints Commissioner. With some modification, the system in force for Metropolitan Toronto is the basis for the mandatory province-wide expansion.

Figure 1



——— Area handled by Police

——— Area handled by Public Complaints Commissioner

– – – – Area handled by Board of Inquiry

* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system.

PART II

Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has reported and analysed data taken from all closed complaint files, permitting the examination of the case-load from a statistical perspective. Careful analysis and study of complaints can also lead to suggestions for improving policing generally, and to specific recommendations for change in police practices and procedures. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1990 there were 650 cases in which a final disposition was reached. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is "closed" when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved quickly while others which require extensive investigation may last over a year.

B. RESEARCH DATA

1. Location of the Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto Police Force. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (45.6%). The next most common location was a private residence (18.8%), followed by public buildings or areas (14.9%).

TABLE 1

Location of Incident	Number	Percent
Street	296	45.6
Residence	122	18.8
Public Building/Area	97	14.9
Police Building	87	13.4
Police Vehicle	24	3.7
Plaza/Mall	12	1.8
Schoolyard/Park	12	1.8
TOTAL	650	100.0

2. Allegations

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (56.2%) made more than one allegation. In total, 1,254 allegations were made. For each case, details of only the six most serious allegations were recorded for statistical purposes.

There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 311 allegations of assault represent 24.8% of the 1,254 allegations that were documented. The other way is by considering the number of cases. Here the 311 allegations of assault represent 47.9% of the 650 cases. The percentage distributions are presented in Table 2 and Figure 2.

The 22 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (38.8%). This was followed by threatening or verbally abusive behaviour (32.1%) and by physical assaults/excessive use of force (24.8%). Misuse of authority was cited in 4.3% of the allegations. It was noted that in 56 or 8.6% of the cases, there was an allegation of improper use of a baton. These allegations included physical assault or threatening with the baton. In 32 or 4.9% of the cases, complainants alleged improper handling of police firearms.

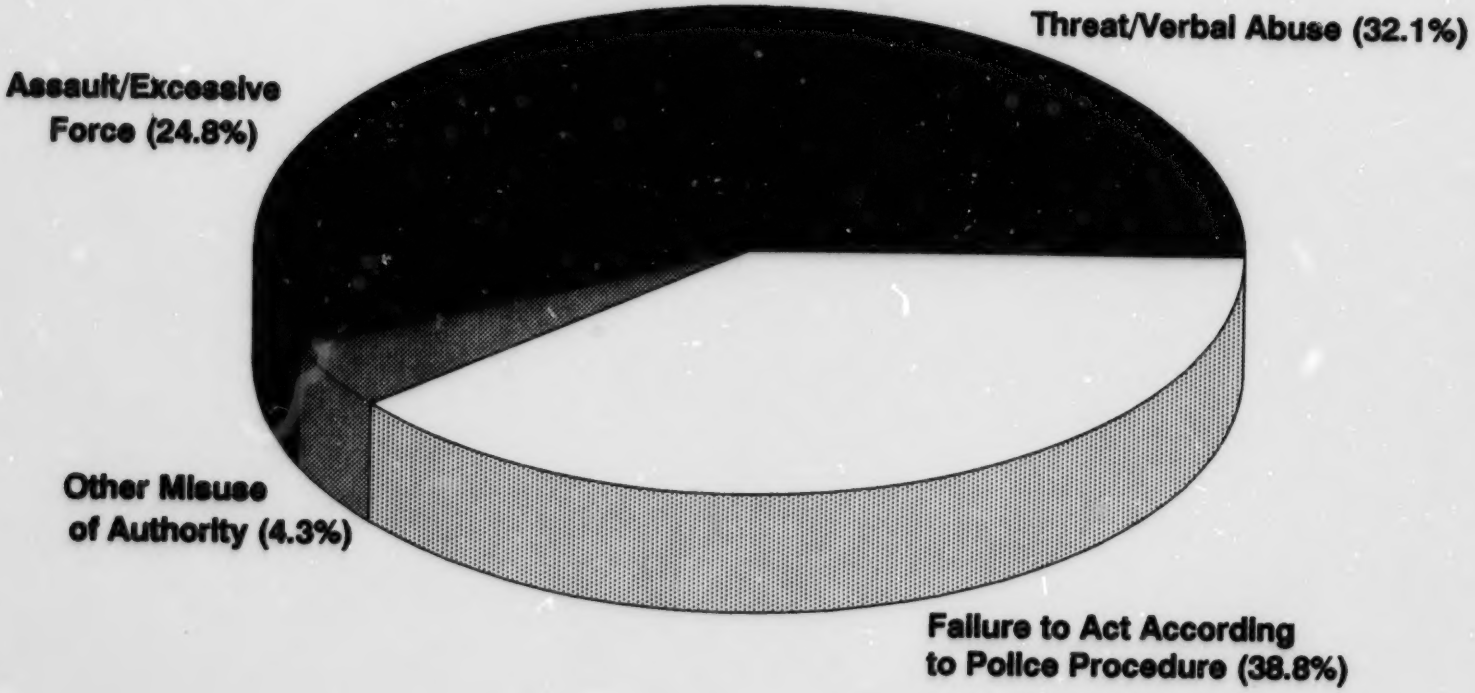
TABLE 2

TYPE OF ALLEGATION

(No. of Cases = 650)

	Number	% of Allegations	% of Cases
Failure to Act According to Police Procedure			
Neglect of Duty	194	15.5	30.0
Improper Search/Entry	60	4.8	9.2
Damage/Mishandle Property	54	4.3	8.3
Improper Arrest/Detention	54	4.3	8.3
Improper Charge	39	3.1	6.0
Failure to I.D. Self	37	3.0	5.7
Improper Use of Discretion	9	0.7	1.4
General	39	3.1	6.0
	486	(38.8)	
Threat or Verbal Abuse			
Incivility/Verbal Abuse	265	21.1	40.6
Harassment/Threat	124	9.9	19.1
Perceived Harassment/Threat	9	0.7	1.4
Verbal Sexual Harassment/Threat	5	0.4	0.8
	403	(32.1)	
Physical Assault/Excessive Force			
Assault with Injury	199	15.8	30.6
Assault	89	7.1	13.7
Assault while Restrained	22	1.8	3.4
Sexual Assault	1	0.1	0.2
	311	(24.8)	
Other Misuse of Authority			
Improper Driving	16	1.3	2.5
Theft/Corruption	15	1.1	2.3
Breach of Confidence	10	0.8	1.5
Deceit	6	0.5	0.9
Lying Under Oath	5	0.4	0.8
Intoxication	2	0.2	0.3
	54	(4.3)	
TOTAL	1,254	100.0	

Figure 2
Type of Allegation


Threat/Verbal Abuse (32.1%)
Assault/Excessive Force (24.8%)
Other Misuse of Authority (4.3%)
Failure to Act According to Police Procedure (38.8%)

The Commissioner, who in 1989 chaired the Ontario Task Force on Race Relations and Policing, continues to be particularly concerned with any allegation of ethnic or racial bias by the police. In 62, or 9.5% of the complaints, there was some mention of a racial or ethnic statement being made. In a further 14, or 2.2% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants stated that they perceived the treatment they received as racially or ethnically motivated.

The Commissioner has observed with interest the work recently undertaken by the Ministry of the Solicitor General, toward employment equity in Ontario police forces. In addition, that Ministry is developing a race relations training package for police personnel from recruits to Chiefs of Police, and for members of Police Services Boards. It is expected that police force commitment to these initiatives will assist police to meet the challenges and recognize new opportunities for policing in our diverse society.

The Office of the Public Complaints Commissioner continues its outreach efforts to minority communities and is seeking effective means to ensure better access to, and use of, the complaint system by all members of the public and to improve police and minority liaison and relations.

In 5 or 0.8% of the cases there was some reference to a disparaging statement regarding homosexuality.

In describing the allegations, the actual incident which led to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were criminal investigation (26.3%), traffic/accident investigation (24.3%) and arrest (21.7%). The remaining incidents are listed in Table 3.

TABLE 3

Precipitating Factor	Number	Percent
Criminal Investigation	171	26.3
Traffic/Accident Investigation	158	24.3
At Arrest	141	21.7
Domestic Incident	29	4.5
Parking Infraction	26	4.0
Request for I.D.	10	1.5
By-Law Infraction	7	1.1
Landlord/Tenant Issues	4	0.6
Other	21	3.2
None Apparent	83	12.8
TOTAL	650	100.0

In 285 or 43.8% of the cases, no charges were laid. The complainant was charged by the police in 335 or 51.5% of the cases. The details are presented in Table 4. In 99.4% of these cases, the charge was laid prior to the complaint being filed.

TABLE 4

Charge Against Complainant	Number	Percent
Highway Traffic Act Offence	146	28.3
Obstruct/Assault Police	83	16.1
Assault	35	6.8
Drug Offence	29	5.6
Theft/Possession of Stolen Goods	27	5.2
Alcohol Related Driving Offence	27	5.2
Weapons Offence	23	4.5
Liquor Offence	19	3.7
Municipal By-Law Offence	17	3.2
Property Offence	15	2.9
Cause a Disturbance/Breach of Peace	13	2.5
Break & Enter and Related Offences	12	2.3
Escape/Breach Probation	10	1.9
Criminal Driving Offence	8	1.6
Robbery/Serious Violence/Homicide	6	1.2
Public Mischief	6	1.2
Other	40	7.8
TOTAL	516	100.0

3. Injuries

There were 216 complainants (33.2%) who alleged that some sort of physical injury occurred as a result of a confrontation with police. Of these, 53 (24.5%) alleged more than one injury. The details of the 269 alleged injuries are presented in Table 5. Of the alleged injuries, 69.4% involved cuts and bruises.

TABLE 5

Alleged Injuries to Complainant	Number	Percent
Cuts/Bruises	187	69.4
Injuries from Handcuffs	35	13.0
Internal	16	6.0
Fractures	16	6.0
Teeth	7	2.6
Groin	4	1.5
Unknown	4	1.5
TOTAL	269	100.0

On the basis of the description in the allegations, medical reports and photographs, the office researcher made a subjective evaluation of injuries. The criteria used were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.,

MODERATE INJURIES: have visible or identifiable signs, such as cuts, bruises, etc.; and

SERIOUS INJURIES: include fractures, teeth injuries, cuts deep enough to require stitches.

Of the 216 complainants who alleged injuries, 53 (24.5%) of the injuries were classified as minor, 75 (34.7%) were seen as being moderate, and 29 (13.4%) were serious. In 59 (27.3%) of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 120 (55.6%) sought medical attention or treatment for their injuries.

4. Characteristics of Officers

Most allegations (88.2%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Two thirds (66.0%) of the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before gaining First Class status). Just under three quarters (72.9%) of the officers had five or more years experience on the police force (Table 7).

TABLE 6

Rank of Police Officer	Number	Percent
Inspector or higher	4	0.4
Staff Sergeant	25	2.6
Sergeant	80	8.6
First Class Constable	617	66.0
Second Class Constable	48	5.1
Third Class Constable	65	7.0
Fourth Class Constable	96	10.3
TOTAL	935	100.0

TABLE 7

Years of Service	Number	Percent	
Under 1 Year	47	5.0	
1 to 2	121	12.9	
3 to 4	86	9.2	
5 to 10	182	19.5	
11 to 15	276	29.6	
16 to 20	132	14.1	72.9
Over 20 Years	91	9.7	
TOTAL	935	100.0	

5. Police Division in which Complaint Arose

The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (88, 13.5%). This division is responsible for the downtown core of Toronto. The next highest number of complaints (73, 11.2%) arose in 14 Division which is immediately west of 52 Division.

TABLE 8

Division of Occurrence	Number	Percent
11	30	4.6
12	13	2.0
13	35	5.4
14	73	11.2
21	13	2.0
22	22	3.4
23	23	3.5
31	42	6.5
32	30	4.6
33	12	1.9
41	36	5.5
42	20	3.1
43	6	0.9
51	60	9.2
52	88	13.5
53	18	2.8
54	25	3.9
55	42	6.5
Central Traffic Unit	17	2.6
Eastern Traffic Unit	4	0.6
Western Traffic Unit	4	0.6
Northern Traffic Unit	3	0.5
Other	6	0.9
Unknown	28	4.3
TOTAL	650	100.0

MTP 298
Rev. February 1989

METROPOLITAN TORONTO POLICE DISTRICT AND DIVISIONAL BOUNDARIES AND BUILDING ADDRESSES
1988

6. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about Metropolitan Toronto police actions at any police station, at the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West (either in person or by telephone). Complaints were registered at the Office of the Public Complaints Commissioner in 44.9% of the cases, at a police station in 37.2% of the cases, and at the Public Complaints Investigation Bureau in 12.0% of the cases. The remainder of the complaints were initiated elsewhere and are presented in Table 9 (see also Figure 3). Over one-third (37.6%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (82.4%) were filed within a month of the occurrence (Table 10).

TABLE 9

Location Complaint Filed	Number	Percent
Office of the Public Complaints Commissioner	292	44.9
Police Station	242	37.2
Public Complaints Investigation Bureau	78	12.0
Chief of Police	27	4.2
Police Commissions	4	0.6
Other	7	1.1
TOTAL	650	100.0

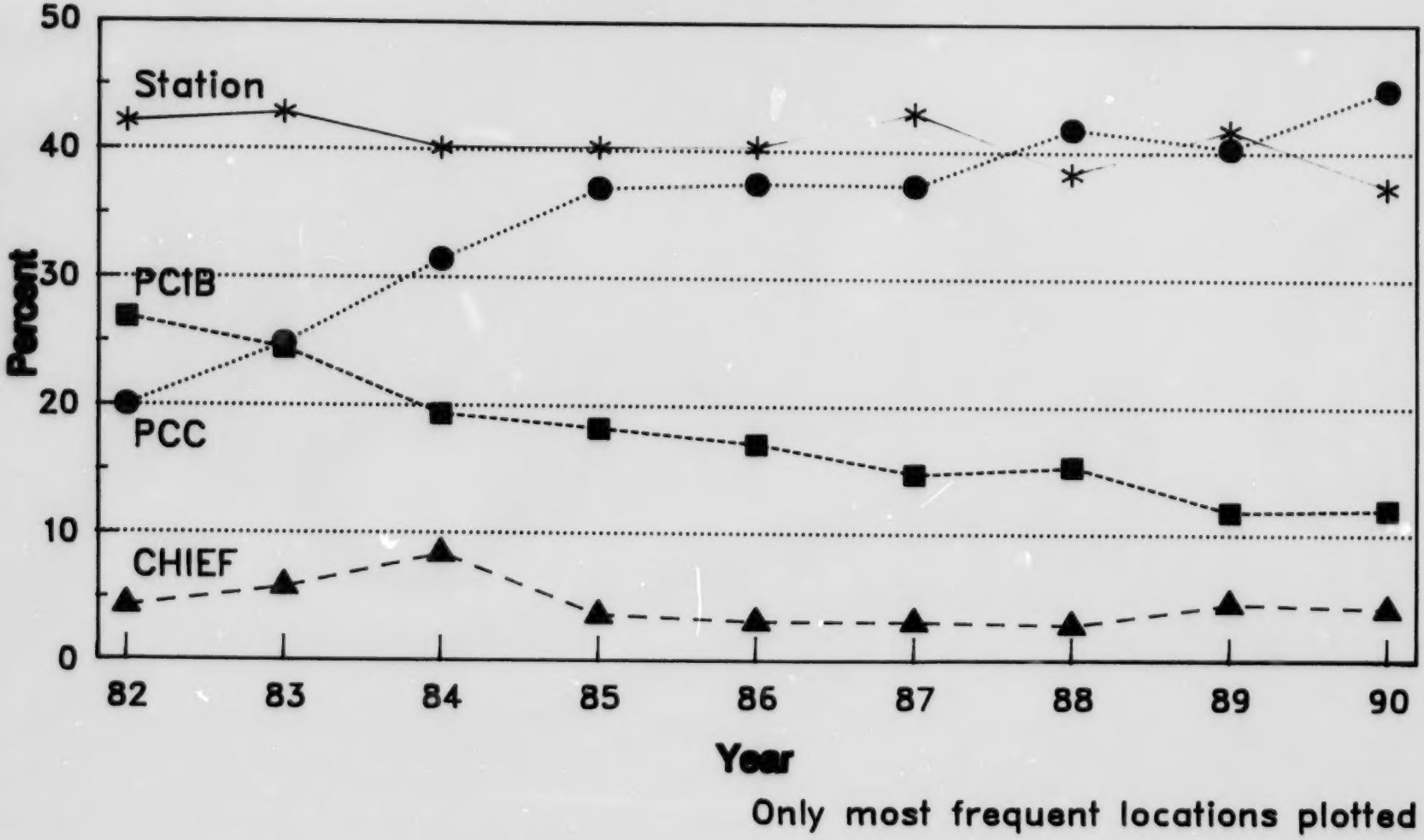
TABLE 10

Days: Occurrence to Filing	Number	Percent
Same Day	150	23.0
Next Day	95	14.6
2 - 31 Days	291	44.8
32 - 60 Days	28	4.3
61 - 90 Days	18	2.8
Over 90 Days	54	8.3
Unspecified	14	2.2
TOTAL	650	100.0

Figure 3

Location Where Complaint Was Filed

Percent Distribution



Only most frequent locations plotted

(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force. That Bureau is headed by a Staff Inspector and staffed by Staff Sergeants and Sergeants who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

The civilian staff of the Office of the Public Complaints Commissioner can conduct the initial investigation of a complaint in three circumstances. They are: upon request by the Chief of Police; when there is unreasonable delay or other exceptional circumstances in the ongoing police investigation; or after receipt of the first interim report from the Public Complaints Investigation Bureau or the expiration of 30 days from the filing of the complaint. The Office of the Public Complaints Commissioner carried out 44 initial investigations in 1990.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 45 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 34 cases the informal resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant.

In 8 cases, informal resolutions were coupled with disciplinary action. In 3 cases officers were counselled or cautioned and in 4 cases officers were advised or spoken to by their superiors. In the remaining case, 12 hours were deducted from the officer's accrued time off.

TABLE 11

Analysis of Informal Resolutions	Number	Percent
Officer admitted allegation, apologized or explained actions	34	75.6
Officer advised/spoken to by superiors	4	8.9
Officer counselled or cautioned	3	6.7
Complainant acknowledged possible mistake	2	4.4
Complainant content to make police force aware of complaint	1	2.2
12 hours deducted from accrued time off	1	2.2
TOTAL	45	100.0

(d) Withdrawals

In 237 cases, the complaints were withdrawn by the complainant. This amounted to 36.5% of all cases closed in 1990. Legal advice was cited by 66 complainants as the reason for withdrawing their complaints. Another 21 complainants who withdrew their complaints stated that it was their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Thirty-five complainants reported personal reasons for withdrawing their complaints. Twenty of the withdrawals were attributed to an admission of

error on the part of the complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. A further 18 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. In another 23 cases, the reasons for withdrawal were not stated. The remaining 54 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

This office continues to monitor all withdrawals and make inquiries of complainants as to the reason for their withdrawals to ensure that such withdrawals are not the result of misunderstanding, threats or other improper pressure.

TABLE 12

Reasons for Withdrawal	Number	Percent
Legal advice	66	27.8
Personal reasons	35	14.8
Not stated	23	9.7
Complainant wanted to draw attention to incident	21	8.9
Complainant admitted error	20	8.4
Concerns dealt with in court	18	7.6
Other	54	22.8
TOTAL	237	100.0

(e) Decisions by the Chief of Police

In the 368 complaints (56.6% of files closed in 1990) which were neither withdrawn nor informally resolved, investigation by either the Public Complaints Investigation Bureau of the Police or the Office of the Public Complaints Commissioner was undertaken. Throughout the investigation, investigator's reports are sent every 30 days to all involved parties including the complainant, the subject officer, and either the Office of the Public Complaints Commissioner or the Chief of Police, as appropriate. Whether the investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designate for a decision.

In 100 (15.4%) of the cases, the Chief concluded that the complaint would not be dealt with under the Act. In 78 of these cases, the Chief decided the complaints were frivolous, vexatious or made in bad faith. In the remaining 22 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

The Commissioner has been concerned about many of the cases which the Chief decides are not within the jurisdiction of the Act. In a number of these cases, it was clear that although

there may have been insufficient evidence to substantiate the complaint, the allegations nonetheless were within the jurisdiction of the Act since, if they had been proved, they would have constituted misconduct. This police interpretation of the power to declare a complaint non-jurisdictional has been a continuing concern of the Commissioner. However, the Police Services Act, 1990, Part VI of which has replaced the complaints legislation which was in force in the 1990 reporting year, has resolved this issue for the future by removing the authority of a Chief of Police to declare a complaint not to be within the jurisdiction of the legislation.

In most of these cases (351, or 95.4%), the Chief concluded that no further action was warranted. In 194 of the "no further action" cases, the Chief stated that there was insufficient evidence to prove misconduct beyond a reasonable doubt. In a further 42 cases, the Chief noted that the officer acted according to police procedure. In 13 cases, the Chief concluded that the evidence supported the officer's version of events. In 2 cases, the Chief offered an apology but no other action was taken.

In a total of 25 cases, some discipline of the accused officer(s) was imposed. Eight of these cases involved informal resolution, whereas 17 were formal decisions made after full investigation. (See Table 13 for a complete breakdown of

discipline imposed by the Chief.) Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment as to whether there is substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. Counselling is recorded on the police officer's file at headquarters.

Caution: As above for counsel. In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge: The Chief of Police may cause an information to be laid against the subject officer, and refer the matter to a Crown Attorney for prosecution.

Of the 17 cases in which discipline was imposed after full investigation, the Unit Commander imposed discipline in 3 cases. In one case, the officer was reprimanded; in another, the officer forfeited 2 days off. In the third, the officer was reprimanded and forfeited 2 days off. The Chief counselled the officer in 7 cases, cautioned the officer in 1 case and cautioned and counselled the officer in 1 case. In 1 case the Chief called a Board of Inquiry. In 4 cases the Chief decided to charge

officers under the Police Act. Three of these cases resulted in forfeiture of time off. In the remaining case the officer resigned and was no longer subject to the provisions of the Police Act.

In all, 11 criminal charges laid by complainants against police officers were disposed of in 1990. In 3 cases the charges were dismissed and in 8 cases the charges were withdrawn.

TABLE 13

Discipline Taken Against Police Officers

Nature of Resolution

Action	Informal	Formal	Total
Officer Spoken to/Advised	4	-	4
Counsel or Caution	3	9	12
Board of Inquiry	-	1	1
Police Act Charge	-	4	4
Discipline at Unit Commander Level	1	3	4
TOTAL	8	17	25

(f) Summary of Disposition of Complaints

Of the 650 complaints closed in 1990, the following dispositions took place:

WITHDRAWALS - 237

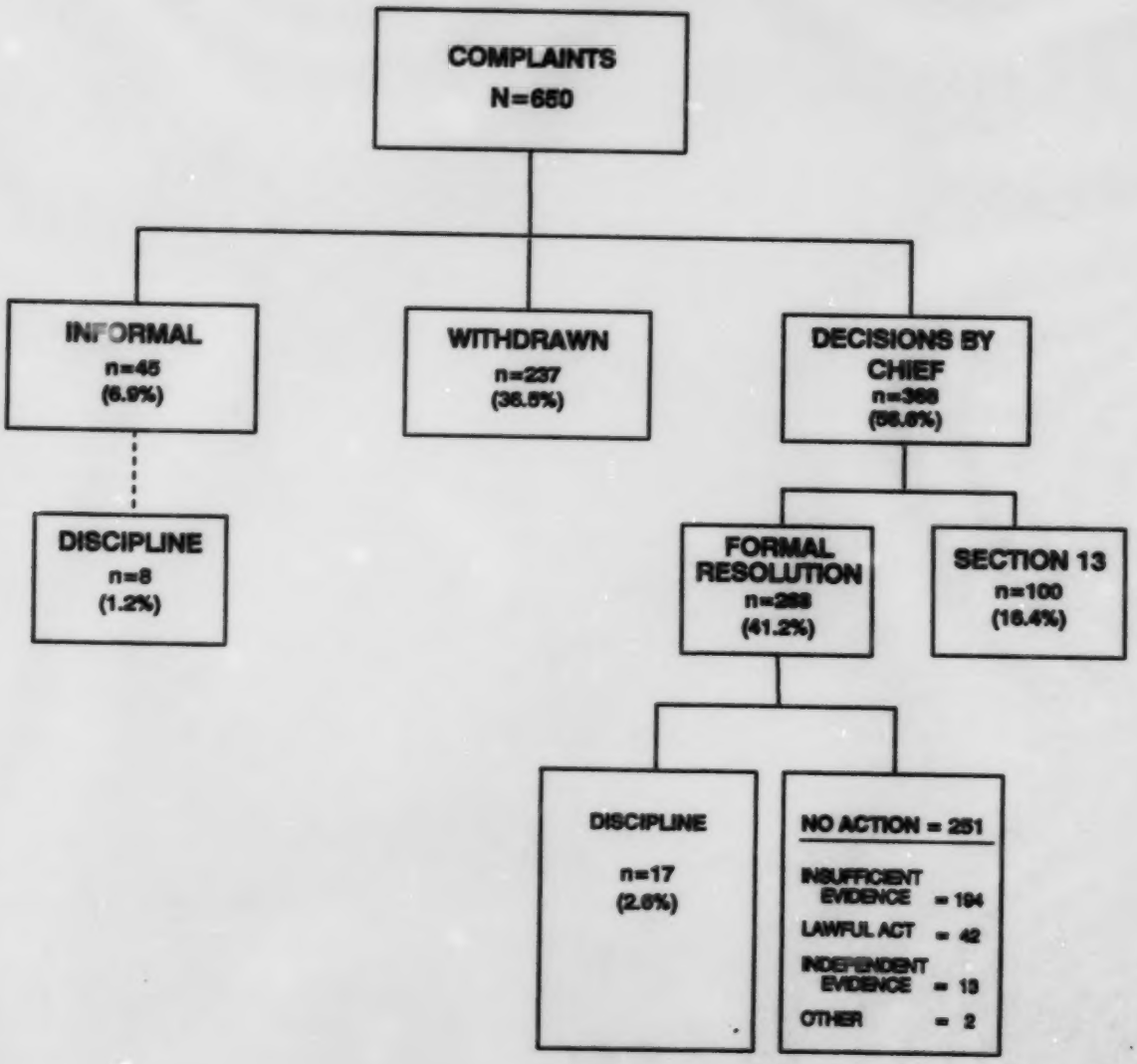
INFORMAL RESOLUTIONS - 45

DECISIONS BY CHIEF - 368

(See Figure 4).

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference found was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4
INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the TOTAL number of complaints

Table 14
COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force	9	12.0	137	31.2	118	20.7	47	27.6	311	24.8
Threat, Verbal Abuse	31	41.3	119	27.1	205	36.0	48	28.2	403	32.1
Failure to act according to police procedure	35	46.7	159	36.2	226	39.6	66	38.8	486	38.8
Other Misuse of Authority	0	0.0	24	5.5	21	3.7	9	5.3	54	4.3
TOTAL NUMBER OF ALLEGATIONS	75	100.0	439	100.0	570	100.0	170	99.9	1254	100.0
AVERAGE ALLEGATIONS PER COMPLAINT	1.7		1.9		2.1		1.7		1.9	

7. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to request a review by the Public Complaints Commissioner. The Commissioner, however, had no jurisdiction under Metropolitan Toronto Police Force Complaints Act, 1984 to initiate a review. Under the Police Services Act, 1990 the Commissioner has been given the power to initiate a review even if the complainant has not requested a review.

In 1990, 72 reviews requested by complainants were completed. In 45 cases in which a review was completed, the Commissioner agreed to take no further action. In 4 cases, the Commissioner decided that it was not in the public interest to order a hearing into the complaint. In 16 cases, the person who had requested a review withdrew the complaint before the review was completed. In 3 cases, the Commissioner arranged an informal resolution of the complaint. Two cases resulted in Boards of Inquiry being completed. In 2 closed cases, formal recommendations were made. In addition, one case which is still open (a board of inquiry having been called but not completed) gave rise to recommendations in 1990. In all, 14 Boards of Inquiry were called in 1990 and one officer appealed a Police Act decision. (A section on Boards of Inquiry appears as Part V of this Report).

8. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 284.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 191. Table 15 sets out these figures.

TABLE 15

Number of Days From Review Request to P.C.C. Decision	Number	Percent
1 - 30 Days	4	5.6
31 - 60 Days	8	11.1
61 - 90 Days	11	15.3
91 - 120 Days	7	9.7
121 - 150 Days	8	11.1
151 - 180 Days	4	5.6
181 - 270 Days	10	13.9
271 - 360 Days	11	15.3
Over 360 Days	9	12.4
TOTAL	72	100.00

9. Complaints filed at the Office of the Public Complaints Commissioner, and requests for review by the Commissioner

Data has been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the review of the police decision.

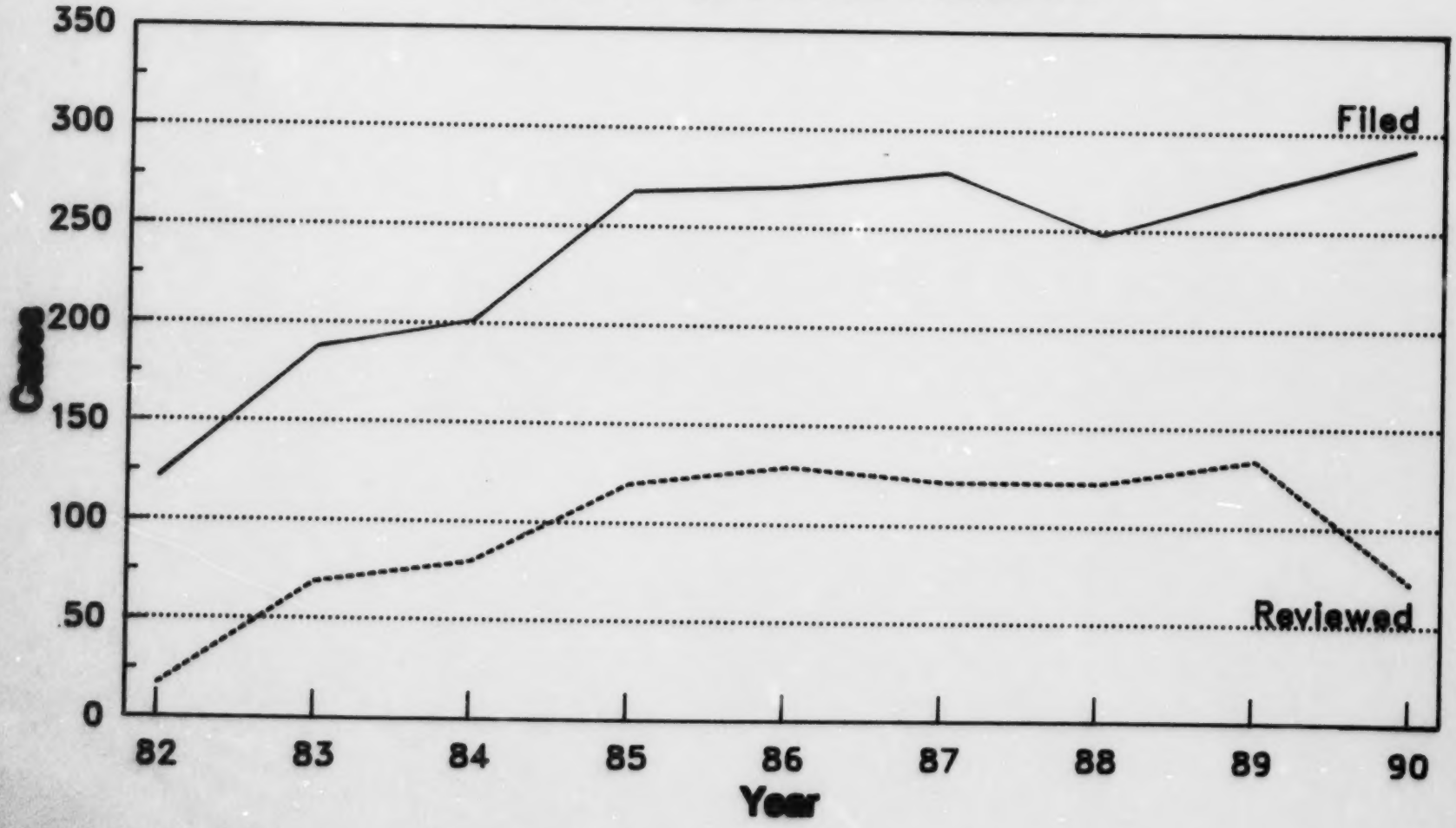
Of the total number of complaints filed, the number of complaints filed at the Office of the Public Complaints Commissioner has risen from 122 in 1982 to 292 in 1990.

Requests for reviews have increased from 17 in 1982 to 90 in 1990.

These increases are presented graphically in Figure 5.

As is apparent from the above figures, public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

Figure 5
Workload Indicators
Public Complaints Commissioner



PART III

Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1990, as in previous years, the Public Complaints Commissioner's staff appeared at police colleges for training sessions on the complaints legislation and its implications. These education sessions allowed for informal dialogue with members of the police forces.

Public education activities and consultations with the public also continued through the year. Speaking engagements were undertaken at law school and high school classes, and the Commissioner has discussed the system in media interviews. The Office continued to make special efforts to provide information to minority communities, and particularly youth in those communities. Staff of the Commissioner's office have attended regular meetings of Jane/Finch Concerned Citizens, an inner-city organization oriented to youth and their parents. Staff have also attended meetings of the Toronto Aboriginal Social Service Association, Council Fire, and the Native Women's Resource Centre, in addition to speaking at a conference in Thunder Bay sponsored by The Ontario Native Council on Justice, and participating in a police-race relations workshop at Regent Park Community Centre.

Investigative and legal staff of the Office of the Public Complaints Commissioner have also attended at the Don Jail to address inmates. Visits have been made to meet members of the "RAP" Group, a group run by two lawyers and attended by approximately twenty inmates of the Don Jail at any given time.

B. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent or avoid the escalation of situations of misunderstandings or hostility between the police and the community. In furtherance of this objective, the Public Complaints Commissioner's staff are involved with a variety of groups created to deal with issues currently confronting the Metropolitan Toronto Police Force and the communities of Toronto and surrounding areas.

1. Council on Race Relations and Policing

The Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of government institutions, community agencies and individuals with an interest in issues pertaining to race relations and policing. The organization was originally established in 1976 and its mandate includes bringing the above-noted groups and individuals together to discuss issues of mutual concern. It also aims to provide advisory assistance to other committees on race relations and policing by developing programs and strategies for joint

problem-solving with the police force, developing public education programs and documenting and analyzing trends and experiences in the police/race relations field. The Office of the Public Complaints Commissioner has been represented on the Council since 1982, and staff have been participants in the work of various sub-committees.

Projects undertaken by the Council included:

- A submission to the Metropolitan Toronto Board of Commissioners of Police on employment equity for racial minorities within the Metropolitan Toronto Police Force
- A submission to the Standing Committee on the Administration of Justice of the Ontario Legislature concerning the Police Services Act, 1990
- A two-day workshop on wife assault and sexual assault
- Workshops for youth at the Vietnamese Association of Toronto and in the Regent Park neighbourhood
- An international symposium on cross-cultural training for police personnel

2. The Greater Toronto Region Working Group on Policing in Multi-Cultural Multi-Racial Urban Communities

The Greater Toronto Region Working Group (the Working Group) was formed in 1984 to address policing issues arising out the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Hamilton/Wentworth, Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well

as the Ontario Provincial Police, the Royal Canadian Mounted Police, representatives of various committees and levels of government and individuals with expertise in the areas of race and ethnic relations and cross-cultural communication. The Office of the Public Complaints Commissioner has been represented on the Working Group since its inception, and office staff at present serve on the Steering Committee and are active on sub-committees.

Having produced reports containing detailed plans of action on the subjects of achieving employment equity in police recruitment and hiring, cross-cultural training for police officers, and police-community liaison activities, the Working Group, this year, reviewed the question of whether it should disband. Since the Working Group appears to be unique both in its composition (senior police officers representing a range of police forces, broad community representation) and in the nature of its output, which is widely regarded as well considered, the group decided to embark upon more projects. The topic identified for the 1990/91 project is crisis management and conflict mediation in multiracial, multicultural contexts.

3. Toronto Mayor's Committee on Community and Race Relations Sub-Committee on Policing

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the Council of the City

of Toronto to promote understanding and respect among racial cultural, ethnic and religious groups in Toronto. In August, 1988, the Committee revived its policy sub-committee which meets regularly and reports to the entire Mayor's Committee on a monthly basis.

Projects undertaken in 1990 included a brief to the Standing Committee on the Administration of Justice on the proposed Police Services Act, 1990, and a meeting with the Solicitor General which included a discussion of employment equity issues and the implementation of the recommendations of the Task Force on Race Relations and Policing, which had been chaired by the Public Complaints Commissioner.

4. Metropolitan Board of Commissioners of Police: South Asian Committee

Early in 1990, a representative of the Commissioner's Office was invited to attend one of the regular meetings between members of the Southeast Asian community and the Metropolitan Toronto Board of Commissioners of Police. The interchange proved fruitful, and the Commissioner has maintained staff attendance at that meeting on a regular basis. As well as the complaint system, the Committee covered such topics as community-based policing, outreach recruiting, race relations training and employment equity.

C. INTERGOVERNMENTAL INFORMATION SHARING AND INITIATIVES

1. Intergovernmental Race Relations Network

The Intergovernmental Race Relations Network, established in June 1988, is a committee of race relations professionals within the provincial, federal and municipal governments, who meet regularly to share information and to develop strategies to address emerging race relations issues. The object is for government organizations to avoid duplication of effort and to enhance performance by sharing of information and experience, and by cooperating in problem solving and in the detection of potential problems.

In 1990, this group focused on crisis intervention strategies.

2. Attorney General's Race Relations Committee

In 1989, the Attorney General's Race Relations Committee commissioned consultants to review the Ministry's services in order to determine if policies and operations meet the needs of a multi-racial, multi-cultural public. In 1990, the Committee extended its review of policies and practices to the Ministry's agencies, boards and commissions. It also commenced implementation of the consultants' recommendations, which included striking a training sub-committee.

D. ATTENDANCE BEFORE THE LEGISLATURE'S STANDING COMMITTEE ON THE ADMINISTRATION OF JUSTICE

The Commissioner was invited to appear before the Ontario Legislature's Standing Committee on the Administration of Justice to address both the substance of the new Police Services Act, 1990 (Bill 107) and the 1989 recommendations of the Task Force on Race Relations and Policing.

In response to questions from the Committee, the Commissioner confirmed that not all of the recommendations of the Task Force had been implemented. He noted, however, that some of the major recommendations would be addressed in the provisions of Bill 107, some were expected to be effected through regulations under The Police Services Act, 1990, and others had been addressed through other government initiatives.

The Committee discussed the need for a general change in policing as it affects visible minority communities. The Commissioner confirmed that the Task Force, while not uncovering gross racism in policing, had found that visible minority communities have been viewed differently from the majority population by police, and that the acknowledgement of this problem is vital to the process of improving relations between visible minority communities and the police.

E. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (IACOLE)

The International Association for Civilian Oversight of Law Enforcement, of which the Public Complaints Commissioner was President from 1987 to 1989, was established in 1985. It provides an international forum for those who work directly with civilian oversight of law enforcement, or who are interested in the subject. The intent of the Association is to encourage and strengthen government agencies charged with the responsibility of examining and commenting upon citizen complaints of police misconduct. IACOLE holds international conferences as an arena for discussion and debate. These conferences have been attended by members of civilian oversight agencies, police executives, elected government representatives, police association officials, government administrators, civil rights/civil liberties advocates, lawyers and criminal justice educators from around the world.

Membership in the Association is divided into two categories: members and associate members. Members are defined as "persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative authority to investigate and/or review complaints against law enforcement." Members are eligible to vote at Association meetings and to serve as officers. Associate members are defined as "persons interested in the oversight of law enforcement." Associate

members are permitted to participate in all Association activities except voting or serving as officers.

The Public Complaints Commissioner currently serves on the Board of Directors of IACOLE as Past President.

During 1990, at the annual mid-year executive meeting of the Board of IACOLE, held in Ottawa, members of the Calgary Police Commission attended and sought consultation regarding the review of their police complaints system. The Police Complaints Commissioner was subsequently invited to Calgary to consult in detail, and did so.

In September 1990, the Commissioner attended the Sixth Annual Conference of IACOLE in Washington, D.C. The conference was attended by representatives from Canada, the United States, Mexico, Australia, Ireland, England, Hong Kong, France, New Zealand, India and the Philippines. The theme of the Conference was "International Perspectives on the Review of Police Conduct: Setting an Agenda for the 90's". Discussion focused on comparative review of oversight models, resolution of complaints by conciliation, crisis management and measuring the effectiveness of civilian oversight.

PART IV

Recommendations to the Metropolitan Toronto Board of Commissioners of Police

Part IV RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations aimed at preventing situations which have given rise to complaints. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or a law affecting the resolution or prevention of complaints, should be altered or implemented. The recommendation power has proved to be a very useful tool in effecting change, even in situations in which it may be inappropriate to call a Board of Inquiry into specific allegations, but in which it would be equally inappropriate not to act at all. Recommendations also can be made when a Board of Inquiry has been called.

The Commissioner made twenty-five recommendations in 1990, twenty-three of which arose from the Economic Summit Conference held in Toronto in June 1988.

Re: Sexual Assault Medical Test Kits

That the Board of Commissioners of Police request the Chief of Police to issue a standing order advising all members of the force that in all cases in which police officers request that the Centre for Forensic Sciences destroy the contents

of a sexual assault kit prior to its being examined, the police must give the interested parties, including the alleged victim of the sexual assault, thirty days notice of their intention to do so in advance of said destruction, and if objection to the said destruction is made, ensure the preservation of the said sexual assault kit until the objecting party advises that it is no longer required.

This recommendation resulted from a complaint by a person who had called the police because of an alleged sexual assault. The complaint concerned discourtesy on the part the officers. Shortly after the investigation, the officers charged the complainant with public mischief, alleging that the complaint of sexual assault was false. Given the Commissioner's concern as to the implications of charges of public mischief against complainants in these circumstances, the investigator requested the results of the sexual assault examination kit from the Centre for Forensic Sciences. The investigator was informed that no report had been completed, since the officers had not requested an examination of the body fluid samples that had been taken. Since there was no request for examination, the samples had been destroyed.

The investigator monitored the trial, at which the complainant was convicted of public mischief. The Commissioner was of the view that, on the evidence, he could not conclude that it would be in the public interest to appoint a Board of Inquiry. However, he was concerned about problems raised in preparing a

defence against charges of public mischief when contents of sexual assault kits were disposed of prior to testing. Such testing might provide positive evidence for the defence. Destruction of the kit might result in an argument, under the Charter of Rights and Freedoms, that the accused had not been provided an opportunity to make full answer and defense to the criminal charge.

Police Response

The Board of Commissioners of Police concurred in the recommendation to the extent that a new Administrative Procedure, that provides that written consent be obtained from the Crown Attorney prior to the disposal of any property seized for expert examination, was put into place.

While this response is positive, the Commissioner is considering requesting a further refinement of the Board's decision.

Re: Court Attendance

1) **That, save and except those circumstances regulated by administrative procedure 2(c)(4) (Court attendance when sick or injured on duty) or 2(c)(12) (Court attendance while on annual leave), when an officer wishes to be relieved of the duty to attend at court, a written request shall be made by that officer to the unit commander setting out the request and the reasons the officer feels he or she cannot attend court.**

2) **That except in situations in which the decision to excuse an officer from attendance at court is made in consultation with a crown attorney or provincial prosecutor, the unit commander shall relieve a subordinate officer from attendance only in exceptional circumstances.**

3) **That the unit commander submit a separate written report to the appropriate superintendent or staff superintendent when a subordinate officer is relieved from attending court, setting out the specific reasons for which that officer has been relieved from court duty. Such a provision would permit managerial monitoring.**

A number of complaints have been lodged by members of the public who have been charged with offences, particularly highway traffic offences, who attended at court to discover that the charges are withdrawn as a result of the police officer not making a court appearance. While many people in such circumstances are quite relieved that the officer has failed to appear, the administration of justice is not particularly well-served in these situations, nor is the reputation of the police force enhanced. Furthermore, some individuals who find themselves in this position have made special arrangements to attend court or have incurred the expense of obtaining legal advice or retaining counsel. Such an individual has, at the very least, been inconvenienced by the fact that the police officer who laid the charge has not followed up by attending the court proceeding. Further, in some cases, the trial could provide the

individual with information which may have an impact outside the realm of the particular criminal or traffic court case. In these circumstances, the fact that a police officer has not attended court might have significant negative consequences for individuals involved. In the light of the above, the Commissioner recommended that an officer be excused from court attendance only in exceptional circumstances.

Police Response:

The Board of Commissioners of Police rejected the recommendation. The Board indicated that, for the most part, the Commissioner's recommendations are already properly addressed by the Regulations and Administrative Procedures of the Force.

Re: Mass Arrest Situations

The remaining recommendations for the 1990 year came about in response to complaint files concerning the manner in which the Metropolitan Toronto Police Force handled arrests made during demonstrations by church groups and social activist organizations in relation to the Economic Summit Conference held in Toronto in June of 1988. These recommendations focused on assisting police to better prepare for and handle the volume of arrests in such situations.

The following is the Recommendation Report, reproduced in its entirety:

* * * * * * *

From June 19th to 21st, 1988, Toronto hosted the Economic Summit Conference, during which a number of demonstrations took place. Several public complaints arising from demonstration arrests were reviewed by the Public Complaints Commissioner pursuant to the provisions of Section 19 of the Metropolitan Toronto Police Force Complaints Act, 1984.

Some general observations about the events surrounding the Economic Summit demonstrations can be made. Clearly, the variety of activities connected with the Conference posed an extremely difficult challenge for the Metropolitan Toronto Police Force, which spearheaded a multi-force security effort. Extensive police planning took place in anticipation of security needs, and in anticipation of the possible arrest and processing of large numbers of demonstrators. Most of the Force's efforts in preparing for the demonstrations are to be commended. However, while the complexity of organizing and conducting security operations during large demonstrations is not to be understated, police continue to have certain critical responsibilities. Police play a fundamentally significant role in the proper administration of citizens' constitutionally protected rights.

In addition, if police arrest demonstrators, they must do so with the least possible amount of force. The sixth principle of policing as set out by Sir Robert Peel is brought to mind:

> "To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective."

Complaints arising from the Economic Summit demonstrations included such allegations as incivility, the denial of right to counsel and the unnecessary use of force. It should be emphasized that as a result of suggestions by the Public Complaints Commissioner and from the media, made immediately following the June 19, 1988 demonstration, steps were quickly taken by police management the following day to address some of the problems which arose.

Further efforts on behalf of the police following the Conference with respect to the right to demonstrate are also noted and commended. During his comments at the November 15, 1989 gathering to reaffirm Standing Order 24, "Declaration of Concern and Intent" the current Chief of Police specifically articulated his commitment to citizens' right to demonstrate. This position had been clearly stated in the June, 1989 Metropolitan Toronto Police Operational Procedure #60, "Protests and Demonstrations", which sets out that:

> "Officers are reminded that people have the legal right to demonstrate peacefully... Therefore, the role of the police... must be one of complete neutrality and action should not be taken until the situation has been carefully assessed."

This Operational Procedure also stressed the importance of avoiding an undue show of force.

The following is background information regarding complaints reviewed by the Public Complaints Commissioner, followed by a series of Recommendations made pursuant to section 21 of the Metropolitan Toronto Police Force Complaints Act, 1984. These Recommendations arise primarily from the information and materials collected in the investigation of the Economic Summit Conference complaints. While these Recommendations focus on mass arrest situations, some will apply to normal police procedures and training and are not limited to the mass arrest situation.

It is felt that while Operational Procedure No. 60 provides basic principles and procedures for mass arrest situations, it might be significantly expanded upon to include matters addressed in the Recommendations set out herein.

BACKGROUND INFORMATION

During the 1988 Economic Summit Conference in Toronto, delegates from seven participating nations attracted media attention world wide.

Another conference known as the Popular or Citizen's Summit was held in Toronto at the same time. This conference was the result of an alliance of church groups and social activist organizations which wished to focus attention on issues such as the environment, poverty and human rights.

One of the events planned by the Popular Summit was a rally on June 19th to be held at Queen's Park, followed by a march down University Avenue to the Metro Convention Centre, the site of the Economic Summit Conference. There it was intended that some of the demonstrators would attempt to present citizens' "Arrest Warrants" to heads of state accused of "crimes against humanity".

Several months before the conference, a committee representing the Popular Summit applied to Metropolitan Toronto Police for a permit for the rally and march, and meetings were held to discuss the proposed route. The committee wanted the march to take place as close to the Summit site as possible. The police were concerned about security and whether they had sufficient personnel to handle an anticipated crowd of 15,000. When no agreement was reached, the committee decided to proceed without a permit.

Anticipating that the march might result in arrests, the committee contacted Mr. Clayton Ruby to arrange counsel for any arrested demonstrators. Two teams of lawyers were established, one to attend the rally, the other on standby. Their services would be provided without fee. Mr. Ruby's office was open for

phone calls and his number was announced at the rally. Mr. Ruby phoned the police the evening before the march to inform them of the arrangement but his call was never returned.

Following the rally, an estimated crowd of 1,500 to 2,000 people began the march down University Avenue. They were stopped at Dundas Street by police barricades, including buses and police vans parked across the intersection.

Those demonstrators with "Arrest Warrants" planned to approach the barricades, eight at a time, to ask the police to serve the warrants. If that failed, they would climb over the barricades and attempt to serve the warrants themselves, with the expectation of being arrested. There was to be no resistance, although some demonstrators planned to go limp as a form of protest.

At first there was a standoff at the barricades. In their first public appearance, officers with the Public Order Unit lined up on one side, demonstrators on the other. Gradually, individual demonstrators climbed the barricades and were taken into custody.

Some demonstrators engaged in a "sit-in" in the intersection. An unknown person set a fire in a newspaper box. There were several small explosions which police say were caused by aerosol spray cans thrown into the fire. One individual was

seen jabbing at officers with a stick. These events, and the fact that traffic had been blocked for several hours, prompted then Deputy Chief McCormack to direct the Public Order Unit to clear the intersection. The crowd was ordered to disperse. Those who remained on the street were arrested by the Public Order Unit officers.

Generally, a demonstrator who crossed the barricades, or remained on the street after the order to disperse, was to be taken into custody by officers with the Public Order Unit, then transferred to uniformed officers behind the lines to commence processing procedures.

Following their arrest, demonstrators were put on buses supplied by the Ministry of Correctional Services to supplement regular police vans. When full, the vehicle was driven to 51 or 55 Division, or Old City Hall where temporary facilities were set up for this occasion. Demonstrators were booked individually and booking procedures videotaped. They were then placed in cells until their release.

It should be noted that in anticipation of having to process and detain large numbers of persons arrested at the Economic Summit Conference demonstrations, senior members of the Metropolitan Toronto Police Force produced an internal plan, entitled "The Economic Summit Conference: Processing, Detention and Release of Persons Arrested", hereinafter called the "Summit Plan". The Summit Plan provided that anyone arrested during

Summit demonstrations was to be restrained with plastic handcuffs, which were later to be removed by booking officers.

According to police records, 144 people were arrested on June 19th, 134 for Breach of the Peace. Those arrested for Breach of the Peace were eventually released without charges. Three people were arrested at the demonstration and charged with criminal offenses. Seven other people were arrested for Summit-related matters, but not at the demonstration. All men arrested were taken to 51 Division, the overflow to Old City Hall; women were taken to 55 Division.

Following the Summit Conference, there were 13 complaints of police misconduct regarding the events of June 19th. Three more complaints were filed after a similar, though smaller demonstration on June 21st. On July 4th, some of the same demonstrators staged a protest in front of the U.S. Consulate. The same day there was a further confrontation between police and a group claiming to be Anarchists. Seven more complaints were filed. An additional two complaints for Summit-related matters were filed by citizens who had nothing to do with the demonstrations. Of the 25 complaints, seven were reviewed by the Public Complaints Commissioner.

Generally the Summit complaints fell into the following categories:

EXCESSIVE USE OF FORCE

Complainants allege there is no need for the police to use force during a peaceful demonstration. Many demonstrators suggested that the strong police presence seen on June 19th could have provoked a violent confrontation when none was intended. They were specifically concerned about the tactics of the Public Order Unit.

There were complaints that some officers were overly zealous with demonstrators whom they recognized from previous demonstrations or with those who went limp on arrest. Officers allegedly tried to force demonstrators to walk on their own by bending their wrists, by gripping their arms so tightly they were bruised and by applying other pressure point techniques to vulnerable spots behind the ears or on the neck. Demonstrators also complained of officers yanking their arms up behind their backs to apply restraints.

USE OF PLASTIC WRIST RESTRAINTS

Many demonstrators suggest that restraints of any kind are unnecessary with peaceful demonstrators. There were specific complaints about plastic wrist restraints applied too tightly or left on for long periods of time as the demonstrators waited to be processed.

RIGHT TO COUNSEL

There were complaints about the inconsistency with which complainants were informed of the right to counsel and complaints of denial of access to counsel.

Mr. Ruby and his associates allege that they went to the stations to be available to the demonstrators but they were deliberately misled by police officers who interfered with their efforts to provide counsel.

POLICE ATTITUDE

The demonstrators felt that the kinds of tactics used by police on June 19th were inappropriate to the type of citizen involved in the demonstration. Many demonstrators were members of church groups or organizations committed to social reform and to the right to peaceful demonstration. They say there would have been no confrontation on June 19th had they been permitted a legal march, and suggest that the confrontation only occurred because the police viewed them unfairly as a lunatic fringe or a threat to security.

IDENTIFICATION OF OFFICERS

There were reports that Public Order Unit officers were not properly identified. The identification of arresting officers was also a problem when the officer who initiated the arrest, usually an officer with the Public Order Unit, was not identified on the Mass Arrest Card or any other police record. In at least one instance, this failure to identify the arresting officer resulted in a uniformed officer being improperly identified as the subject of a complaint.

RECOMMENDATIONS

1. USE OF FORCE

Complaints arising from the Economic Summit demonstrations included allegations that unnecessary force was used upon protesters arrested by police. In particular, arresting officers employed the use of "pressure point" holds, also known as "come-along" holds or "pain-compliance" techniques on non-violent protesters who would not voluntarily walk when required to do so but remained "limp" and would have to be carried.

The use of pain compliance techniques by police has been the subject of criticism in the United States. Legislation has passed by which funds are withheld from any municipality that

fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies against individuals engaged in nonviolent civil rights demonstrations. This legislation, in part, was put forth as a result of demonstrators complaining about the use of pressure point holds.

It is our opinion that when a demonstrator is nonviolent, that individual ought to be treated as such. The use of unnecessary force upon a peaceful demonstrator is inappropriate.

1. **It is recommended that police management ensure, through appropriate training and force administrative procedures and guidelines, that arresting officers understand:**

   (a) police personnel should use the least restrictive and the least forceful method of arrest that is consistent with their security needs in any given situation, including the mass arrest situation; and

   (b) the use of force, in particular the use of pressure point holds, in circumstances in which protesters are nonviolent, is not acceptable behaviour and may be unlawful.

2. **It is recommended that the police force review alternative, less forceful and potentially dangerous methods of dealing with a "limp", nonviolent protester.**

2. USE OF HANDCUFFS

At present, Metropolitan Toronto Police Force Regulation 4.8.2. sets out that the use of handcuffs is discretionary in circumstances in which, for example, handcuffs may be necessary to prevent the escape of a prisoner in custody. That the use of handcuffs is a matter of discretion on the part of the arresting officer is clearly demonstrated by use of the words "handcuffs

may be used...". The Regulations also indicate that women and juveniles should not normally be handcuffed.

The Summit Plan procedure, which dictated the use of plastic handcuffs, overruled the usual discretion afforded to officers. It appears that the Economic Summit demonstrations were prejudged as a sufficiently serious situation to warrant the removal of discretion on the part of not only arresting and transport officers, but, in addition, supervisory officers. It is our respectful opinion that a blanket order automatically to handcuff all prisoners during a particular demonstration, regardless of the actual circumstances confronted, is neither reasonable nor justified.

3. **It is recommended that the police should not limit the use of discretion on the part of supervisory, arresting and transport officers as to whether or not handcuffs are necessary in any particular situation. The conduct of an individual should, in each instance, be the determining factor.**

Plastic Handcuffs

It is our understanding that the use of plastic handcuffs by police is common in mass arrest situations as they possess many features which make them convenient.

Despite their convenience, our investigation has caused us some concern with respect to their safety and comfort. We have received a number of reports from demonstrators that the plastic

handcuffs caused problems such as extreme discomfort, particularly in excessively hot temperatures. In addition, because of the nature of the plastic handcuffs, police officers did not have the ability to readjust them if they were applied improperly, nor did all police officers or transport personnel have the ability to remove them, in cases of medical or other emergencies, if they were not carrying cutter removers.

4. **It is recommended that in situations in which plastic handcuffs are used, removal cutters should be readily accessible to all police personnel, including transport personnel.**

3. TRANSPORTATION OF PRISONERS

It is evident from the information collected by way of the complaints that a number of arrested persons were left handcuffed for long periods in transportation vehicles, in extremely hot temperatures, awaiting transfer from the scene of the demonstration to the police station. We have received reports that female prisoners waited in transportation vehicles for up to two hours before they were transferred from 51 Division to 55 Division. Not only can these long delays cause physical discomfort, prisoners are also effectively denied an opportunity of exercising their constitutional rights during the delay.

5. **It is recommended that police management ensure that adequate transport facilities and vehicles be available to avoid unreasonable delays in processing prisoners.**

6. **It is recommended that the Multiple Arrest Incident Card, as referred to in Recommendation 9, be amended to contain a section which will indicate the time a prisoner was placed in a transport vehicle.**

4. RIGHT TO COUNSEL

(a) General Comments

Complaints with respect to the issue of the right to counsel included the inconsistency with which prisoners were informed of their rights and the denial of requests to see counsel.

Despite the difficulties involved in arresting and processing large numbers of demonstrators, the police force and its individual officers play an important role in ensuring that citizens' constitutional right to retain and instruct counsel is properly protected and administered. It is important that officers be informed of and understand that role and its underpinnings.

7. **It is recommended that the following principles be set out at the beginning of any Administrative Procedure dealing with the duties of police officers whose responsibilities involve citizens' constitutionally protected rights:**

   - **On arrest or detention, every person has a right to retain and instruct counsel without delay and must be informed of that right;**
   - **The right to counsel arises upon arrest or detention;**
   - **It is irrelevant if the person under arrest is, or is not, formally charged with an offence;**

- **The police must ensure the person arrested clearly understands the right to counsel;**

- **When an individual has expressed a desire to exercise the right to counsel, that person must obtain advice on how to exercise that right;**

- **Prisoners are entitled by law to exercise the right to counsel in private;**

- **Administrative or investigative convenience cannot serve as justification for ignoring or delaying constitutional rights, in particular the right to counsel.**

8. **It is recommended that the above mentioned principles be set out in a further Routine Order to be released immediately to all members of the Metropolitan Toronto Police Force.**

(b) <u>At the Scene of the Arrests</u>

Multiple Arrest Incident Cards were used during demonstration arrests. It was anticipated that these cards would contain sufficient information to enable the booking officer to process arrested persons, thereby avoiding the necessity of the arresting officer leaving the scene to accompany a prisoner to the police station. However, there was no procedure in place for an arresting officer to record whether or not a prisoner had been advised of the reasons for arrest and his or her right to counsel. Nor was there a procedure in place to record a prisoner's request to exercise the right to counsel and subsequently bring that information to the attention of the booking officer.

9. **It is recommended that the Multiple Arrest Incident Card be amended to contain the following additional sections:**

(i) Prisoner advised of the reason for the arrest (space for the officer to initial),

(ii) Prisoner advised of the right to counsel (space for the officer to initial), and,

(iii) Prisoner requested the right to counsel (to be completed if the prisoner requests counsel; space for officer to initial).

10. It is recommended that if any police officer comes into direct contact with a prisoner before the booking process and is advised by the prisoner that he or she wishes to exercise the right to counsel, that police officer must, if possible in the circumstances, indicate this request on the Multiple Arrest Incident Card. If it is not possible to make such a notation immediately, that officer ought to make efforts at the earliest possible opportunity to ensure that the prisoner's request is brought to the attention of appropriate police personnel, such as the booking officer or transport officer.

(c) Booking Process

The Public Complaints Commissioner reviewed a number of complaints with respect to exercising the right to counsel, during the booking stage following the demonstration arrests.

It is our opinion that a large number of problems and subsequent citizen complaints could be avoided at the booking stage of the process by expanding the responsibility of the officer in charge, making that officer directly responsible for ensuring the prisoner's rights are properly protected and administered.

Current Metropolitan Toronto Police Administrative Procedures do not provide that an officer in charge is to discuss with the prisoner, directly, the prisoner's understanding of reasons for arrest or the right to counsel. The officer in charge must simply ensure that the prisoner has been informed of the reasons for arrest and the right to counsel. This requirement could be fulfilled by merely conferring with the arresting officer privately and not with the prisoner directly.

Further, it is our opinion that additional problems have arisen because the officer in charge does not ascertain specifically whether or not a prisoner wishes to exercise the right to counsel. To avoid these problems, that officer should ask if a prisoner wishes to exercise the right.

We recognize that to ask a prisoner whether or not he or she wishes to exercise the right to counsel may not be a specific requirement in law at present. However, the Supreme Court of Canada in R. v. Brydges made a liberal and generous interpretation of section 10(b) of the Canadian Charter of Rights and Freedoms. Police can only benefit by moving in conformity with the direction the Supreme Court of Canada appears to be taking. To its credit, the Force has already moved in this direction with respect to the duties of the arresting officer. The specific information on the

"Right to Counsel" card read by the police to any person being arrested includes a statement which reads, "Do you wish to call a lawyer now?" This practice should be extended to the booking officer.

The following recommended procedure would apply equally to any arrest situation and not be confined to a mass arrest situation.

11. **It is recommended that the Record of Arrest Form be amended to contain the following additional information, confirmed directly with the prisoner:**

    (i) the prisoner has been informed of and understands the reason for arrest;
    (ii) the prisoner has been informed of and understands the right to retain and instruct counsel without delay;
    (iii) the prisoner has been asked if he or she wishes to exercise the right to counsel; the prisoner's response should be noted;
    (iv) the prisoner has been advised that, if the right to counsel has not been exercised during the booking process, the prisoner may make a request to exercise the right at any time during detention;
    (v) a list of any personal property belonging to the prisoner that has been confiscated by the police.

    The signature of both the officer in charge and the prisoner is required on the Record of Arrest Form.

We recognize that portions of the Record of Arrest Form repeat information on the Multiple Arrest Incident Card, but feel it is important that each form contain the necessary information. The overlap will be in a mass demonstration situation only.

It should serve to protect both the prisoner and the police force if all information collected, or conveyed by the booking officer to the prisoner, is handed to the prisoner in written form.

12. It is recommended that a separate form, or the appropriate section of the Record of Arrest Form, which sets out the prisoner's rights as stated above and a list of the prisoner's property confiscated by the police, be provided to every prisoner on completion of the booking process.

(d) Exercising the Right to Counsel Following Demonstration Arrests.

Our investigation revealed that prisoners who did not make specific requests to exercise the right to counsel during the arrest or booking stages, but subsequently expressed a desire to see counsel, were not permitted to exercise their rights.

Many demonstrators were aware that organizers were supplying counsel to the demonstration. The demonstrators were not always aware of the name of counsel supplied. They did not feel the necessity during the booking stage or other times to specifically request counsel, as they assumed that counsel provided by the organizers would arrive shortly, at which time they would be given an opportunity to exercise the right without specific request.

Normal police procedure regarding counsel should be modified in order to accommodate the special circumstances of the mass arrest situation.

13. **It is recommended that an applicant, on an application form for a parade permit, be asked whether or not special counsel arrangements have or will be made for arrested protesters, and to name such counsel, if possible.**

14. **Procedures dealing with mass arrest situations should provide that when a lawyer advises that he or she has been retained by demonstration organizers, counsel should be regarded as special duty counsel and immediately be given the names of persons arrested in connection with the demonstration. As well, after the arrival of demonstration counsel, each prisoner must be advised immediately that counsel is present and can speak to them upon request. If a prisoner requests to speak with special counsel, the police should grant that request immediately.**

(e) Right to Privacy

Instructing counsel in private, either in person or by telephone, is an essential component of the right to counsel. Privacy need not be specifically requested by counsel or the prisoner. Counsel may speak to prisoners in a group only if counsel and the prisoners consent to the procedure and adequate facilities are available.

15. **It is recommended that the Metropolitan Toronto Police Force review its internal facilities to ensure that the demand of the law is met, including the provision of adequate physical facilities, interview rooms, and telephones to accommodate a prisoner's right to counsel in private.**

5. POLICE TRAINING

(a) Ongoing Training: Constitutionally Protected Rights

A review of the existing training materials and discussions with police college trainers revealed that current training focuses primarily on procedure. It appears that officers are not provided with a specific educational session on the philosophical basis for constitutionally protected rights.

16. It is recommended that a separate, specific training module be developed focusing on the constitutional rights of the citizen, their rationale, impact on the police and the role of the police in a democratic society. This training would be mandatory for all recruits. As well, a mandatory refresher session should be required for any officer advancing to a position such as an officer in charge or a booking officer with supervisory functions, prior to such an officer assuming these responsibilities.

(b) Pre-Demonstration Training/Preparation

Our investigation revealed that the Summit Plan briefing materials which were circulated to all relevant police personnel included an overview which stated, "Certain groups of demonstrators and protesters are determined to disrupt and embarrass Metropolitan Toronto during this Summit".

Chief McCormack's stated commitment to support the democratic right of citizens to demonstrate suggests that the comments in the overview are inappropriate.

17. It is recommended that Metropolitan Toronto Police management ensure that pre-demonstration briefing materials comply with the Force's commitment to police neutrality and citizens' right to demonstrate.

In light of the very complex and important nature of the rights of an individual on arrest, and the fact that a demonstration may give rise to mass arrests, it is important that police personnel be fully briefed prior to a demonstration.

18. It is recommended that, prior to a demonstration, all police personnel directly involved with any process which raises prisoners' constitutional rights, in particular, arresting and booking officers be fully briefed on the law, police procedures and their responsibilities to ensure consistency throughout the process.

6. GENERAL ISSUES

(a) Information Lists

The Summit demonstrations raised a number of concerns from citizens claiming they experienced difficulty in locating family members whom they believed had been placed under arrest. As well, counsel retained by the demonstration organizers indicated they had difficulty obtaining the names of individuals who were under arrest at the various police facilities.

19. It is recommended that lists of arrested individuals prepared during the booking process be made available to counsel and to prisoners' family members as each prisoner is booked.

20. It is recommended that in a mass arrest situation, a central information facility be created which will maintain an updated list of all persons arrested around the city specifying at what police Division each prisoner has been incarcerated and the status of each individual under arrest, i.e. notation when released.

21. It is recommended that each Division involved in processing persons arrested at a demonstration assign a police officer to act as an information officer. The information officer would be responsible for the updated lists of prisoners being made available to the prisoners' counsel and family members and to coordinate information with the central information facility.

(b) Uniforms

Information was brought to our attention that the identification numbers of individual members of the Public Order Unit were not always clearly visible on their uniforms. It was noted that identification numbers were taped to the shoulders of their uniforms (not on the front) and that their caps were not always worn. When the Public Order Unit stood shoulder-to-shoulder, their identification numbers could not be easily seen. It is our understanding, however, that this matter is currently being considered and the problems will be rectified in the near future.

* * * * * * * * * * *

PART V

Boards of Inquiry

PART V - BOARDS OF INQUIRY

A. INTRODUCTION

Either the Public Complaints Commissioner or the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

Under the Metropolitan Toronto Police Force Complaints Act, 1984, which governed Boards of Inquiry in 1990, the individuals who form Boards of Inquiry which hear and decide upon complaints are selected from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by the Metropolitan Toronto Council; and the remaining one-third are recommended jointly by the Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing. No member of a Board of Inquiry may be a police officer.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee recommended by the Solicitor General and Attorney General. The standard of proof in these proceedings requires that an allegation be proved beyond a reasonable doubt for there to be a finding of misconduct. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply. There are additional provisions in the complaints legislation protecting the rights of police officers.

Between January 1, 1990 and December 31, 1990 a total of fourteen complaints were referred to a Board of Inquiry, thirteen by the Commissioner and one by the Chief of Police. Within the reporting period, nine complaints were given hearing dates in 1990; three of these were among the fourteen complaints referred to a Board in 1990.

Four Boards of Inquiry completed their proceedings and produced decisions during 1990. Two had been called in 1989, and two in 1988.

B. BOARD OF INQUIRY DECISIONS

1. RE: LEVY and SGT. FRISCH and P.C. VANDERHART

DATE: June 29, 1990

CHAIR: Gary Yee

Hearing ordered by Public Complaints Commissioner.

The complainant (David Levy) alleged that P.C. Gregory Vanderhart, at the scene of the arrest, and Sgt. John Frisch, at the police station, used unnecessary violence against him, contrary to section 1(g)(ii) of the Code of Offences under the Police Act.

P.C. Vanderhart admitted striking the complainant in the stomach with a baton, and Sgt. Frisch admitted causing the complainant to lose his balance, whereupon the officer's hand struck the complainant in the eye. The complainant agreed that Sgt. Frisch had apologized to him immediately after the unnecessary violence.

Both officers agreed that the complainant had not provoked them.

Pursuant to a joint submission by defence counsel and counsel for the Attorney General, the Board decided upon a penalty of forfeiture of five days off and a reprimand for P.C. Vanderhart, and a forfeiture of ten days off and a reprimand for Sgt. Frisch.

The Board took into account the exemplary records of both officers; however, they were extremely disturbed by the fact that these assaults were unprovoked. Furthermore, the Board was particularly offended by the fact that the assault by Sgt. Frisch had occurred behind closed doors. The Board felt that Sgt. Frisch's rank and experience should weigh against him as it carries with it the responsibility to set an example for subordinate officers.

2. RE: FISHER and P.C. CARTER
DATE: March 23, 1990
CHAIR: Eleanor A. Cronk
Appeal from Police Act hearing.

P.C. Michael Carter was charged with neglecting to carry out a lawful order contrary to section 1(b) (ii) of the Code of Offences under the Police Act, by failing to fill out an occurrence report.

The officer had been approached by the complainant, who requested that the officer accompany him to make a report concerning the break-in of the complainant's car and subsequent theft of possessions within the car. P.C. Carter refused to attend the scene and to make the report as requested by the complainant.

Pursuant to the hearing ordered under the Police Act, P.C. Carter was found guilty of misconduct and required to

resign within seven days or to be summarily dismissed from the police force.

P.C. Carter appealed this decision of the police tribunal to the civilian Board of Inquiry as provided for in section 16 of the Metropolitan Toronto Police Force Complaints Act, 1984. The officer appealed on two grounds: that there was "a glaring error" in the evidence of the complainant, and that the Superintendent erred in determining that dismissal was the appropriate remedy.

The Board considered the evidence and decided that the Superintendent had correctly assessed the evidence, taking into account the circumstances pertaining to this officer, and had correctly administered the proper penalty. The Board reviewed P.C. Carter's personal file and found numerous misdemeanours. The Board agreed with the finding of dismissal. The appeal was therefore dismissed.

3. RE: RAMSAY and SGT. LANG, P.C. QUINTIERI and P.C. MORPHET

DATE: February 19, 1990

CHAIR: W. A. Derry Millar

Hearing ordered by Chief of Police.

The commencement of these proceedings was delayed due to a decision by the Chief of Police not to make a final decision with regard to this complaint until a civil suit

launched concurrently by the complainant was decided. The Divisional Court in Re Ramsay and The Chief of Police of Metropolitan Toronto et al. (set out in the 1988 Annual Report) directed the Chief of Police to make his decision on the basis of the final report so that the complaint process could proceed expeditiously, as mandated in the legislation.

It was alleged by the complainant, Dana Ramsay, that Sgt. David Lang, P.C. Michael Morphet and P.C. Victor Quintieri took the complainant, who was at a football game, behind closed doors, and used unnecessary violence against the complainant by punching and kicking him, contrary to s. 1(g) (i) of the Code of Offences under the Police Act.

The Board found misconduct on the part of Sgt. Lang and P.C. Quintieri, and no misconduct against P.C. Morphet. The Board imposed a written reprimand on each officer, in addition to a forfeiture of twelve days off to be worked without pay.

4. RE: ZWIRKO and SGT. BROWN, P.C. LADD, P.C. GALLIPEAU and P.C. CLIFFORD

DATE: May 8, 1990

CHAIR: E. Irish

Hearing ordered by Public Complaints Commissioner.

The complainant, Stanley Zwirko, alleged that Sgt. Allen

The complainant, Stanley Zwirko, alleged that Sgt. Allen Brown, P.C. John Ladd, P.C. Ronald Clifford and P.C. Edward Gallipeau used unnecessary violence against him by threatening him and punching him in the course of conducting a strip search in a cell area, contrary to section 1(g) (ii) of the Code of Offences under the Police Act.

The Board found that the above-mentioned officers were not guilty of misconduct. They accepted that Mr. Zwirko suffered some injuries as a result of a struggle, but concluded the injuries were caused because the officers had to use necessary force to take him into custody. The Board, however, was satisfied that someone had stood on Mr. Zwirko's chest during the incident, and felt compelled to comment on this incident. They found this conduct disturbing and deplorable because it was totally unnecessary. At the time that an officer was standing on Mr. Zwirko's chest he was in a passive state. There was no sign that Mr. Zwirko was trying to resist at this point, and therefore, it was puzzling as to why an officer saw fit to stand on the complainant's chest. Unfortunately, counsel for the Attorney General was unable to prove which officer it was. The board stated that it hoped that the authorities at the police station would see fit to carry out some sort of internal investigation with regard to this particular incident with the aim of sending a clear message that this type of conduct would not be tolerated.

APPENDICES

APPENDIX A

Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

Printed by Gérard J. M. Raymond,
Queen's Printer for Ontario

1

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act, Interpretation

(a) "Bureau" means the Public Complaints Investigation Bureau;

(b) "chief of police" means the chief of police of the Metropolitan Police Force;

(c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;

(d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;

(e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;

(f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";

(g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*; R.S.O. 1980, c. 381

(h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;

(i) "police officer" means a police officer on the Metropolitan Police Force;

(j) "prescribed" means prescribed by the regulations;

(k) "regulations" means the regulations made under this Act;

(l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application of Act

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

R.S.O. 1980, c. 381

Appointment of Public Complaints Commissioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers, etc.

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring handling of complaints and inquiries

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

Annual report

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Summary of decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

Panel for boards of inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Recommendations for appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Failure to make joint recommendations

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Individual recommendations to be considered

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Idem

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Failure to make recommendations

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Term

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Idem

(6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43

(7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

1981, c. 43

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau

5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff

(2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made

6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information

(2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation

(3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

Copy of complaint

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint.

Idem

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint.

Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6.

Notification by Commissioner

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant.

Where no action to be taken

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint.

Action under R.S.O. 1980, c. 381

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant.

Person deemed directly affected

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7.

Reclassification by Bureau chief

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith.

Response

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry,

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification during investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer to be informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of informal resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of record to be furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation.

Where complaint to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*.

R.S.O. 1980, c. 224

Informal resolution by Commissioner

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

No reference in personal record of subject officer

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

Investigation

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Interim reports

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Exception

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Final report

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Idem

(5) A final investigation report prepared under subsection (4) shall,

(a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

(b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and

(c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

(a) a complaint is frivolous, vexatious or made in bad faith;

(b) a complaint is not within the jurisdiction of this Act; or

(c) a complaint is one that could or should be more appropriately dealt with under an Act other than this Act,

the chief of police may decide that the complaint or any part thereof not be dealt with under this Act.

Notice

(2) The chief of police shall notify the Commissioner, the complainant and the subject officer of any decision made under subsection (1).

Disciplinary action under R.S.O. 1980, c. 381

(3) Notwithstanding subsection (1), the decision of the chief of police shall not prevent the chief from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder.

Review by Commissioner

(4) The complainant may, within thirty days of receiving notification under subsection (2), request the Commissioner to review the decision made under subsection (1), in which case all the provisions of this Act relating to a review by the Commissioner apply with necessary modifications.

Extension of time

(5) Notwithstanding subsection (4), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review. 1984, c. 63, s. 13.

Powers and duties of chief of police

14.—(1) The chief of police shall review a final investigation report and he may order such further investigation as he considers advisable and may, unless he decides that no action is warranted,

(a) cause an information alleging the commission of an offence by the subject officer to be laid and refer the matter to the Crown attorney for prosecution;

(b) order that one or more of the allegations contained in the complaint be heard by a board of inquiry;

(c) cause disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder; and

R.S.O. 1980, c. 381

(d) after giving the subject officer ten working days to reply, either orally or in writing, to the complaint, counsel or caution the subject officer regarding his conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing not stayed

R.S.O. 1980, c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging from personal record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation by chief of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application of s. 23

R.S.O. 1980, c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

Notice of decision

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Police officer may appeal

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

R.S.O. 1980, c. 381

Notice of appeal

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Extension of time

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Commissioner may investigate

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

(a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;

(b) upon the request of the chief of police; or

(c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

Review of decision

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

R.S.O. 1980, c. 224

Notice to chief of police

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Idem

(4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of action taken

(5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation

(6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request for review

19.—(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension of time

(2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may be ordered

(3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice

(4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

Where appeal under s. 16

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19.

Powers on investigation or review

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint.

Powers on inquiry

R.S.O. 1980, c. 411

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act.

Appointment of person to make investigation or review

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review.

Identification

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request.

Report

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner.

Obstruction

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review.

Search warrant

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board of inquiry to be constituted

22.—(1) Where,

(a) the chief of police has ordered that a matter be heard by a board of inquiry;

(b) a police officer has appealed under section 16; or

(c) the Commissioner has, under subsection 19 (3), ordered a hearing,

a board of inquiry shall be constituted in accordance with this section.

Assignment to board of inquiry

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Idem

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Constitution of board R.S.O. 1980, c. 381

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Who shall be on board

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Statement of alleged misconduct

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Record

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Costs of record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

When hearing *de novo* and when on record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include,

(a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and

(b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney General to have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity to examine evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not to communicate with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only members at hearing to participate in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

Decision

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board.

Release of documents

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined.

Police officer not required to give evidence R.S.O. 1980, c. 484

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent.

Statement or admission not admissible in evidence

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be.

Proof of misconduct

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt.

Imposition of penalty

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may,

(a) direct that days off not exceeding five days be forfeited;

(b) direct that pay not exceeding three days pay be forfeited; or

(c) reprimand the police officer.

Idem

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may,

(a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

(b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;

(c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;

(d) direct that days off not exceeding twenty days be forfeited;

(e) direct that pay not exceeding five days pay be forfeited; or

(f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor General and Attorney General entitled to be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice, etc., may be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

Matters confidential

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder; R.S.O. 1980, c. 381

(b) as may be required for the due enforcement of the law;

(c) to his counsel; or

(d) with the consent of the person to whom the matter relates.

Testimony

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is inadmissible in evidence

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Idem

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26. R.S.O. 1980, c. 381

Application of 1984, c. 11, s. 146

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

R.S.O. 1980, c. 325 does not apply

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

Agreement for contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

(a) respecting the reporting and publication of decisions of boards of inquiry;

(b) assigning duties to the Commissioner;

(c) establishing a system that provides for the assignment of panel members on a rotational basis;

(d) prescribing forms and providing for their use; and

(e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory committee

32.—(1) There shall be a committee composed of,

(a) the Deputy Attorney General;

(b) the Deputy Solicitor General;

(c) the chairman of the Ontario Police Commission;

(d) the Commissioner;

(e) the Assistant Deputy Attorney General-Criminal Law; and

(f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

(a) to maintain under review the practice and procedures under this Act;

(b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;

(c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and

(d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

Recommendations

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32.

Recommendation of Attorney General

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33.

Repeal

34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43

(2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

Commencement

35. This Act comes into force on the 21st day of December, 1984.

Short title

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*.

APPENDIX B

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL

FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.

2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.

3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.

4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.

5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.

6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.

8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.

9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.

10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.

11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.

12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(*a*) DISCREDITABLE CONDUCT, that is to say, if he,

(i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,

(ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,

(iii) uses profane, abusive or insulting language to any other member of a police force,

(iv) wilfully or negligently makes any false complaint or statement against any member of a police force,

(v) assaults any other member of a police force,

(vi) withholds or suppresses a complaint or report against a member of a police force,

(vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or

(viii) contravenes any provision of the *Police Act* or the regulations;

(*b*) INSUBORDINATION, that is to say, if he,

(i) is insubordinate by word, act or demeanour, or

(ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(*c*) NEGLECT OF DUTY, that is to say, if he,

(i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report,

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(*d*) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(*e*) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

(iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,

(iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,

(v) makes any anonymous communication to the chief of police or superior officer or authority,

(vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,

(vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or

(viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;

(*f*) CORRUPT PRACTICE, that is to say, if he,

(i) takes a bribe,

(ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,

(iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,

(iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,

(v) improperly use his character and position as a member of the police force for private advantage,

(vi) in his capacity as a member of the police force writes, signs or gives, without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

(vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;

(*g*) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,

(i) without good and sufficient cause makes an unlawful or unnecessary arrest,

(ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or

(iii) is uncivil to a member of the public;

(*h*) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

(i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or

(ii) fails to report waste, loss or damage however caused;

(*i*) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

(i) while on duty is unfit for duty through drinking intoxicating liquor, or

(ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or

(iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or

(iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(*j*) LENDING MONEY TO A SUPERIOR; OR

(*k*) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 107

(Chapter 10
Statutes of Ontario, 1990)

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General

1st Reading	December 20th, 1989
2nd Reading	May 17th, 1990
3rd Reading	June 28th, 1990
Royal Assent	June 28th, 1990

Printed under authority of the Legislative Assembly by the
©Queen's Printer for Ontario

wear or use clothing or equipment that was issued to him or her in that capacity.

Suspension without pay

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal.

Earnings from other employment

72.—(1) If a police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period.

Exception

(2) Subsection (1) does not apply to earnings from other employment that was commenced before the period of suspension.

PART VI

PUBLIC COMPLAINTS

Definitions

73.—(1) In this Part,

"bureau" means the public complaints investigation bureau of a police force;

"Commissioner" means the Police Complaints Commissioner appointed under section 99.

Police officer

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint.

Attorney General

74. This Part shall be administered by the Attorney General.

Application of Part

75. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part.

Bureau

76.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau.

Staff

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively.

Small police forces

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provi-

sion of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public

77.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

(a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or

(b) at an office of the Commissioner; or

(c) at any bureau, police station or detachment.

Recording of complaint

(2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give a copy of the completed form to the person who makes the complaint.

Information

(3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence, preliminary investigation

(4) The person on duty who is in charge of a place when a complaint is received shall,

(a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately;

(b) if he or she considers it appropriate, ensure that a preliminary investigation is conducted immediately; and

(c) ensure that a report on the evidence and on the preliminary investigation, if any, is forthwith prepared and attached to the complaint.

Copies of complaint

(5) The person who records the complaint shall forthwith send copies of it,

(a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

(b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;

(c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;

(d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

Complaint made to another police force

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made more than six months after incident

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint by Commissioner

78.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Recording of complaint, copies

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Complainant

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Non-application of certain provisions

(4) Subsection 77 (7) and sections 80 (notice to potential complainant), 81 (classification of complaint), 82 (reclassification), 83 (informal resolution) and 85 (decision by chief of police re no further action) do not apply to complaints made under this section.

Notice to police officer

79.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Form

(2) The notice shall be written on a form provided by the Commissioner.

Notice to potential complainant

80.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the

complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

81.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

Response to complainant

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation.

Effect

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part.

Reclassification

82.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint.

Idem

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint.

Notice

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1).

Effect

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part.

INFORMAL RESOLUTION, WITHDRAWAL

Informal resolution by person in charge of bureau

83.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or by the Commissioner after that time.

Board's consent

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution.

Record

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer.

Copies

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau.

Commissioner's decision that complaint to continue

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or

other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal of complaint

84.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or to the Commissioner after that time.

Idem, complaint made by Commissioner

(2) If the complaint was made under section 78, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

Form

(5) The notice of withdrawal shall be written on a form provided by the Commissioner.

Commissioner's decision that complaint to continue

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal.

Notice

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

POWERS OF CHIEF OF POLICE

Decision re no further action

85.—(1) At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

Notice

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision.

Power to commence or continue disciplinary proceeding

86.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if,

(a) the complaint is withdrawn or is resolved informally; or

(b) the complaint is not to be further dealt with under this Part because of subsection 77 (7) (complaint filed more than six months after incident) or section 80 (complaint made by person not directly affected), or because of a decision by the chief of police under section 85.

Notice to Commissioner and complainant

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding.

INVESTIGATION OF COMPLAINT

Investigation

87.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures.

Interim reports

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the police officer interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Exception

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Idem

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

88.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

(a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 87 (3) has expired;

(b) if the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates;

(c) if the Commissioner has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or

(d) if the chief of police requests that the Commissioner conduct the investigation.

Duty of chief of police

(2) The chief of police, if he or she becomes aware that the complainant has commenced a court proceeding of the kind described in clause (1) (b), shall forthwith notify the Commissioner of the fact.

Complaints concerning more than one police force

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Notice

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (c).

Effect on bureau

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Manner of conducting investigation

(6) Section 87 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Investigation of complaint made by Commissioner

89.—(1) If the complaint was made under section 78, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 87 does not apply.

Interim reports

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Exception

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Idem

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of final report

90.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of further investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report, and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

(a) decide that no further action is necessary;

(b) admonish the police officer regarding the matter in accordance with subsection 59 (1);

(c) hold a disciplinary hearing under section 60;

(d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or

(e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision that no further action is necessary or a decision to admonish the police officer.

Idem

(6) If the chief of police orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

(7) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension. Six-month time limit

(8) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary. Deemed decision

REVIEW BY COMMISSIONER

91.—(1) The Commissioner shall review the decision of the chief of police, Review by Commissioner

(a) at the complainant's or police officer's request, in the case of a decision under section 90 to admonish the police officer;

(b) at the complainant's request, in the case of a decision under section 90 that no further action is necessary;

(c) at the complainant's request, in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(2) The Commissioner may, if in his or her opinion it is in the public interest to do so, review the decision of the chief of police, Idem

(a) in the case of a decision under section 90 to admonish the police officer;

(b) in the case of a decision under section 90 that no further action is necessary;

(c) in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(3) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint. Idem

(4) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving notice of the decision, unless the Commissioner grants an extension. Thirty-day limit

Complaint made by Commissioner

(5) In the case of a complaint made under section 78, the Commissioner may review,

(a) a decision by the chief of police to admonish the police officer;

(b) a decision by the chief of police that no further action is necessary;

(c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commissioner's decision

(6) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(7) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(8) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

HEARING BY BOARD OF INQUIRY

Police officer's appeal to board

92.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of time for appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 103 (2) may grant an extension of the time provided for serving a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Appeal to be combined with other hearing

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 91 shall be combined.

Constitution of board

93.—(1) A board of inquiry shall be constituted,

(a) when the chief of police orders under section 90 that a matter be heard by a board of inquiry;

(b) when the Commissioner orders a hearing under section 91; and

(c) when a police officer appeals under section 92.

Assignment of members to board

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible:

1. As presiding officer, a member who was appointed on a recommendation made under subsection 103 (2).

2. A member who was appointed on a recommendation made under subsection 103 (3).

3. A member who was appointed on a recommendation made under subsection 103 (4).

Complaint against chief of police

(3) In the case of a complaint against a chief of police, the board of inquiry shall include, instead of a member of the panel who was appointed on a recommendation made under subsection 103 (3), a person, other than a police officer or a member of the Law Society of Upper Canada, appointed to the board of inquiry by the chair of the panel on the recommendation of the Ontario Association of Chiefs of Police.

New hearing, exception

94.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive new or additional evidence as it considers just.

Record of disciplinary hearing

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board.

Idem

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Parties

95.—(1) The parties to a hearing are,

(a) the complainant;

(b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem

(2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage

(3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct

(4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing

96.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence

(2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146

(4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence

R.S.O. 1980, c. 484

(5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Board not to communicate in relation to subject-matter of hearing

(7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate.

Exception

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law.

Adjournment for view

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Release of exhibits

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Stay

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the misconduct or possible misconduct to which the complaint relates, the hearing shall continue unless the Crown Attorney advises the presiding officer that it should be stayed until the conclusion of the court proceedings.

Only members at hearing to participate in decision

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it.

Decision

(13) The decision of a majority of the members of the board is the board's decision.

Penalties

97.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

(2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

(3) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

(4) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

98.—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

(2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

(3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

99.—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

(3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part.

Monitoring handling of complaints

(6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police.

Local offices

(7) The Commissioner may establish local offices.

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices. Idem

(9) The Commissioner shall report annually to the Attorney General. Annual report

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor. Audit

100.—(1) For the purposes of an investigation under section 88 or 89 or a review under section 91, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act. Powers on inquiry

R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request. Identification

(5) The person shall report the results of the investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review. Obstruction

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter Search warrant

the place, by force if necessary, search for the documents or things and examine them.

Entry and search at night restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations concerning police practices or procedures

101.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

(a) the Attorney General;

(b) the Solicitor General;

(c) the chief of police;

(d) the association, if any; and

(e) the police services board, in the case of a municipal police force.

Comments

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner.

Judicial review of Commissioner's decisions

102. The Commissioner's decisions under subsection 83 (5) (complaint to continue to be dealt with despite informal resolution), subsection 84 (6) (complaint to continue to be dealt with despite withdrawal) and clause 88 (1) (c) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision.

BOARDS OF INQUIRY

Panel for boards of inquiry

103.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints.

Recommendations for appointment

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Police Association of Ontario.

Idem

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario.

Failure to make recommendations

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies.

Term

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms.

Continuance in office for uncompleted assignments

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term.

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chair

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Annual summary of decisions

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

GENERAL MATTERS

Police officer's employment record

104. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police offi-

cer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

(a) the police officer is convicted of an offence in connection with the incident;

(b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;

(c) the chief of police admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);

(d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or

(e) the police officer resigns before the complaint is finally disposed of.

Resignation after hearing ordered

105.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 90 or 91.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 93, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force.

2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

Idem

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.

2. If the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Notice

106.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered

personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Delegation by chief of police

107.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part.

Delegation by Commissioner

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part.

Application of section

108.—(1) This section applies to every person engaged in the administration of this Part, including a member of a police force.

Confidentiality, exceptions
1987, c. 25

(2) A person shall preserve secrecy in respect of all information obtained in the course of his or her duties and not contained in a record as defined in the *Freedom of Information and Protection of Privacy Act, 1987*, and shall not communicate such information to any other person except,

(a) in accordance with subsection (3);

(b) as may be required for law enforcement purposes; or

(c) with the consent of the person, if any, to whom the information relates.

Permitted disclosure

(3) A person may communicate information obtained in the course of his or her duties,

(a) as may be required in connection with the administration of this Act and the regulations; or

(b) to his or her counsel.

Non-compellability

(4) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Inadmissibility of documents

(5) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 96 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-application of R.S.O. 1980, c. 325

109. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement for contributions

110. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

111. A person who contravenes subsection 96 (4) (photography at hearing), 100 (6) (obstructing Commissioner) or 108 (2) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Definition

1984, c. 63

112.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition, complaints under former Act

(2) Despite the repeal of the former Act by subsection 148 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

SPECIAL INVESTIGATIONS

Special investigations unit

113.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Idem

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

Peace officers

(4) The director and investigators are peace officers.